



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

September 24, 2010

The Honorable Randy C. Huffman
Secretary
West Virginia Department of Environmental Protection
601-5 7th Street
Charleston, West Virginia 25304

Dear Secretary Huffman:

Thank you for the submission of West Virginia's draft Phase I Watershed Implementation Plan (WIP) to the U.S. Environmental Protection Agency (EPA) on September 1, 2010. I greatly appreciate the efforts of the Department of Environmental Protection (DEP) and your colleagues in preparing the WIP.

This letter outlines the process EPA used to evaluate the draft Phase I WIPs, as well as the methods used to develop the backstop allocations for the draft Total Maximum Daily Load (TMDL). It also includes the next steps needed to finalize the WIPs in preparation for the November 29, 2010 deadline.

Enclosed, please find a two-page summary of EPA's evaluation of West Virginia's WIP and the draft allocations that EPA is establishing in West Virginia to ensure that practices are in place by 2017 to achieve 60 percent of the necessary nutrient and sediment reductions, and by 2025 to meet the TMDL allocations. Achieving these restoration milestones will not be easy and requires the leadership and commitment from federal, state, and local governments within the Chesapeake Bay Watershed.

EPA conducted a rigorous evaluation of the seven Bay jurisdictions' draft WIP documents and input deck submissions. EPA used the WIP input deck to run jurisdictions' proposed practices through Scenario Builder and the Chesapeake Bay Watershed Model to project the nutrient and sediment loads that would be delivered to the Bay. For each major source sector, EPA evaluated whether proposed gap-filling strategies through 2017 met expectations; contained some deficiencies; contained serious deficiencies; or was inadequate compared to the expectations set forth in a November 4, 2009 letter to the Principals' Staff Committee and the April 2, 2010 *Guide for EPA's Evaluation of Phase I Watershed Implementation Plans*. Based on these expectations and model analysis, the WIP Evaluation Team asked whether:



- the draft WIP demonstrated that the jurisdiction would meet its nitrogen, phosphorus, and sediment allocations assigned on July 1, 2010 and August 13, 2010 at the jurisdiction-wide and major river basin scales;
- a major pollutant loading source sector had serious deficiencies within its gap-filling strategies to reach the 2017 Interim Target;
- the proposed wasteload allocations (WLAs) in the draft WIP could be achieved through implementation of a permitting program; and
- EPA's own assurance, based upon its federal legal authorities, could ensure achievement of the backstopped point source reductions through enhanced program oversight, permit objections, compliance assurance, and enforcement actions.

The enclosed summary provides additional details supporting EPA's finding that the gap-filling strategies in West Virginia's WIP had serious deficiencies and the numbers did not meet West Virginia's nitrogen and sediment allocations announced July 1 and August 13. West Virginia did meet its phosphorus allocation, and EPA is willing to work with your agency over the next two months to determine whether West Virginia could exchange nitrogen and phosphorus without further increasing sediment loads and/or contributing to downstream water quality impairments.

In instances where WIPs do not achieve the basin-level nutrient and sediment allocations or where they do not provide assurance that the point and nonpoint source reductions could be achieved, EPA is establishing backstop allocations that replace proposed WLAs for point sources with more stringent or appropriate point source limits. Where possible, EPA is redistributing point source loads to nonpoint source sectors with insufficient reasonable assurance. EPA is assuming additional nonpoint source reductions as necessary to meet the July 1 and August 13 nutrient and sediment load allocations.

Based on our evaluation, EPA is establishing minor, moderate, or high level backstop allocations in all jurisdictions. EPA is establishing high level backstop allocations in the draft TMDL in West Virginia because the jurisdiction did not submit an input deck that met the July 1 nitrogen and August 13 sediment allocations. Furthermore, the WIP did not demonstrate assurance that these reductions could be achieved and maintained through permitting and nonpoint source control programs. The WIP relied largely on existing voluntary programs, with no specific discussion of program enhancements that would increase implementation of nutrient and sediment controls.

Until these deficiencies and other deficiencies are addressed, EPA will not establish gross wasteload load allocations or load allocations (LAs) in West Virginia. Instead, we are establishing draft individual WLAs for significant wastewater treatment plants. We are establishing aggregate WLAs for nonsignificant wastewater treatment plants, urban stormwater and Concentrated Animal Feeding Operations (CAFOs) point sources. We are also establishing separate LAs for each nonpoint source sector.



For significant wastewater plants, the backstop allocations are based on the limit of technology treatment. For urban stormwater, draft WLAs are based on the assumption that 50 percent of total urban acres meet aggressive performance standards through retrofit and redevelopment requirements. Finally, for CAFOs, the draft WLAs are based on waste management, runoff controls, and feed management for confined animals. These assumptions and deficiencies highlighted in EPA's WIP evaluation are explained further in the enclosure. I strongly encourage West Virginia to continue working with EPA to address these concerns.

DEP, working closely with its sister agencies and the citizens of West Virginia, has the opportunity to strengthen the final Phase I WIPs, which are due to EPA on November 29. At that point, EPA will determine if the minor backstop adjustments can be removed. Throughout this process, EPA staff will share best practices identified in the other WIPs and provide additional technical and programmatic assistance.

Mr. Jon Capacasa, Director of Region III's Water Protection Division, will be sending a more detailed document to you next week that further explains EPA's feedback on West Virginia's WIP. In addition, my staff will be scheduling a half-day meeting in next few weeks with the state agencies involved in WIP development to discuss our evaluation, answer questions and map a path forward to strengthen West Virginia's Phase I WIP and the final TMDL allocations.

EPA is also pleased to announce the beginning of the public review and comment period for the Bay TMDL starting today, September 24, 2010. EPA has established a public docket for this Notice under Docket ID No. EPA-R03-OW-2010-0736. The Draft Bay TMDL is available in the docket at <http://www.regulations.gov>. Assistance and tips for accessing the docket can be found at <http://www.epa.gov/chesapeakebaytmdl>. Comments will be accepted through <http://www.regulations.gov> and by mail. Links to the jurisdictions' WIPs are available at <http://www.epa.gov/chesapeakebaytmdl>.

I look forward to our continued dialogue as we work toward a revised WIP and final TMDL. These past 25 years have shown us that although we have achieved successes in Bay restoration, violations to water quality standards persist that threaten this national treasure. Although the Bay TMDL and WIPs are just two of the many actions we are taking to restore and preserve the overall health of the Chesapeake Bay, our success in doing so is dependent upon these commitments.

Sincerely,



Shawn M. Garvin
Regional Administrator

Enclosure

cc: Ms. Teresa Koon



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